

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA:

RSA.No. 598 of 2005.

Date of Decision : 6.12.2006..

Vikram Singh

....Appellant.

Versus:

Chander Mohan

...Respondent.

Coram:

The Hon'ble Mr.Justice V.K.Ahuja, Judge.

Whether approved for reporting?¹

For the appellant: Mr.Kuldeep Singh, Sr.Advocate
 with Mr.Bimal Gupta, Advocate

For Respondent. Mr.Y.P.S.Dhaulta, Advocate.

V.K. Ahuja, J.

This is an appeal filed by the appellant/defendant against the judgment and decree of the Court of learned Additional and District Judge, Sirmour dated 12.5.2004 vide which the decree passed by the learned Sub Judge, Ist Class, Rajgarh vide his judgment dated 23.9.2003 in a suit for injunction against the appellant, was confirmed.

The brief facts of the case are that the respondent filed a suit for injunction in regard to the land measuring 97.6 bighas comprising Khata Khatauni No. 1/1 alleging that the suit land is joint of the parties and the defendant is threatening to change the nature of the suit land by raising construction without the consent of the plaintiff and other co-sharers. It is also pleaded by the plaintiff that the

¹ Whether reporters of Local Papers may be allowed to see the judgment?

defendant is raising an orchard in the joint land and has threatened to occupy the best portion of the suit land.

The defendant/appellant pleaded that he is in exclusive possession over the suit land from the time of his predecessors-in-interest. He also pleaded that he has raised a construction over the suit land twenty years ago and has also raised an apple and peaches orchard and planted pine and eucalyptus plants in the suit land. The suit was tried by the learned trial Court and, who decreed the suit and granted relief to the plaintiff restraining the defendant from changing the nature of the suit land by way of raising construction and planting the orchard in the suit land till the suit land is joint. The first appeal filed by the appellant/defendant was also decreed by the learned Additional District Judge in favour of the respondent.

I have heard Shri Kuldeep Singh, learned senior counsel for the appellant and Mr.Y.P.S.Dhaulta, learned counsel for the respondent and also gone through the record of the case. There is no dispute in regard to the fact that the suit land is joint in possession of the parties . It is also not disputed by the learned counsel for the plaintiff that during the course of arguments the defendant has already raised a construction over a part of the suit land. The only grievance, raised by the learned counsel for the appellant during the course of argument, was that in so far as the learned trial Court has granted the relief in favour of the plaintiff restraining the defendant from planting the orchard is concerned, it could not have been granted since the land is being used since long by the defendant by planting various types of trees over the suit land. It is thus clear that the suit land is joint and the learned trial Court has rightly granted the relief in favour of the plaintiff restraining the defendant from changing the nature of the suit land by way of raising further construction over the suit land. In so far as the relief granted in favour of the plaintiff-respondent is concerned restraining the appellant from planting orchard over the suit land since

the land was being used as an orchard by the defendant, he cannot be restrained from planting the orchard or plucking the fruit from the orchard already raised over the suit land. In so far as the second relief which was granted by the learned trial Court as against the appellant restraining him from planting the orchard is concerned, the said relief could not have been granted in favour of the respondent in view of the fact that he had raised an orchard over the suit land since the land was being used as such. Thus, the second part of the relief as mentioned above is not liable to be granted in favour of the plaintiff and the decree deserves to be amended accordingly. The appeal filed by the appellant is partly allowed to this extent and the second relief granted as above shall be deemed not to have been granted by the learned trial Court. The appeal is partly allowed.

**(V.K.Ahuja),
Judge.**

December 6,2006.(R)